IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 190 of 2005(V)

PETITIONER:

ANANDAVALLY, W/O.LATE P.K.KARUNAKARAN,
THURAVOOR SOUTH P.O. CHERTHALA, ALAPPUZHA DIST.

BY ADV. SRI.K.K.SATHISH.

RESPONDENTS:
----

1. **UNION OF INDIA, REP. BY THE SECRETARY**
   MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS
   DIVISION, LOK NAYAK BHAVAN, KHAN MARKET,
   NEW DELHI 110 003.

2. **STATE OF KERALA, REP. BY THE SECRETARY,**
   GENERAL ADMINISTRATION (FFP.A) DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER
SRI.P.PARAMESWARAN NAIR,ASST.S.G.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.190/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT.

EXT.P.2: COPY OF THE INVITATION LETTER ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA VIDE NO. F6-2733/73 DTD. 08/08/1975 TO THE PETITIONER'S LATE HUSBAND TO RECEIVE THAMRAPATRA.

EXT.P.3: COPY OF THE ORDER NO. R. DIS. 1154/72/F6 DTD. 29/02/1972 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA.

EXT.P.4: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF S.S.S. PENSION DTD. 10/07/1998.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

- -

W.P.(C).NO.190 of 2005-V

- -

Dated this the 21st day of August, 2007

JUDGMENT

The petitioner is the widow of late Shri P.K. Karunakaran who had actively participated in the Punnapra – Vayalar Movement during the freedom struggle. He was arrayed as 6th accused in case No.C.C.18/125ME on the file of the First Class Magistrate, Cherthala. On 13.12.1949 he was convicted and sentenced to undergo one year simple imprisonment and he had undergone imprisonment in Central Prison, Trivandrum for a period of 8 months from 16.1.1950 to 16.9.1950. He was granted a remission of two months and 26 days at that time.

2. Ext.P1 is the true copy of the extract of the convict register produced from the Central Prison, Trivandrum duly certified by the Superintendent, Central Prison, Trivandrum. Ext.P2 is the letter dated 8.8.1975 issued by the District Collector, Alappuzha informing the late husband of the petitioner that in view of his sufferings during the freedom struggle for the independence of the country, he has been honoured by grant of Thamrapathra and he has also been invited to receive the same in the function to be held on 15.8.1975. Ext.P3 is the order granting pension

under the Kerala Freedom Fighters' Pension Rules, with effect from 1.4.1971. He died on 23.5.1985 and the petitioner is getting the dependent family pension under the scheme as per order dated 2.8.1985 of the District Collector, Alappuzha.

3. Punnapra – Vayalar Struggle was recognised by the Government of India as part of National Freedom struggle with effect from 20.1.1998. The petitioner submitted Ext.P4 application dated 10.7.1998 for SSS Pension. Since no action is being taken by the State Government to forward due recommendation, the petitioner has filed this writ petition.

4. Union of India has filed a counter affidavit stating inter-alia that the recommendation of the State Government is mandatory and such a report is not available in the Ministry. On behalf of the second respondent, a counter affidavit has been filed. In paragraph 4 of the same, it is stated that the claim of the petitioner in Ext.P4 is related to case No.C.C 18/125 ME. As this is not included in the Register of Punnapra – Vayalar cases kept in the office of the District Collector, Alappuzha, the District Collector had not recommended the application to Government.

5. Learned counsel for the petitioner points out that the late husband of the petitioner was granted Kerala Freedom Fighters' Pension as per Ext.P3 for his participation in the Punnapra – Vayalar Struggle. He was also

honoured by granting 'Thamrapathra' recognising his participation in that struggle which is evidenced by Ext.P2. Therefore, it is submitted that the stand now taken in the counter affidavit is totally without any justification.

6. I see force in the above submission made by the learned counsel for the petitioner. It is undisputed that he was granted pension by the State Government by Ext.P3 for the part played by him in the Punnapra – Vayalar Struggle, evidently. That assertion of the petitioner has not been denied in the counter affidavits. He has also been honoured by grant of 'Thamrapathra' and the letter issued by the District Collector itself recognised the laudable part played by the late husband of the petitioner in the freedom movement. The stand now taken in the counter affidavit therefore is totally unjustified. Ext.P1 shows that the offence leading to the imprisonment is under Section 9(1) of Ordinance V of 1125. The authorities should have applied their mind to the relevant circumstances leading to the grant of Kerala Freedom Fighters' Pension and 'Thamrapathra' and should have forwarded the recommendation to the Central Government without harping on such technicalities. When there is already grant of Freedom Fighters' Pension considering the participation of the late husband of the petitioner in the freedom struggle and as it is even now continued in favour of the petitioner, refusal to recommend the same for

Central pension is un-understandable. May be that the schemes are distinct and different, but the State after recognising his sufferings related to the very same struggle, cannot refuse to recommend the application. It is for the Central Government to consider the claim.

7. Therefore, there will be a direction to the second respondent to forward the verification-cum-entitlement report duly recommending the case of the petitioner for grant of pension under the SSS Pension Scheme, within a period of six weeks from the date of receipt of a copy this judgment. On receipt of the same, the first respondent shall pass appropriate orders within a further period of two months. The claim of the petitioner for payment of arrears with effect from the date of receipt of Ext.P4 application dated 10.7.1998 shall also be considered by the first respondent, in the event of sanction of pension.

The writ petition is disposed of in th above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

kav/